

STATEMENT OF PURPOSE

RS18828

This bill modifies mortgage foreclosure law to provide similar protection to guarantors of obligations secured by mortgages as is given to borrowers. In 1988, the Idaho Supreme Court ruled in the case of *First Security Bank of Idaho v. Gaige*, 115 Idaho 172 (1988), that Idaho law does not provide guarantors the same protections as borrowers under Idaho's foreclosure laws, and that the issue was best left for the legislature to decide.

The present economic turmoil has brought emphasis to this issue as some lenders seek judgments against guarantors for payment of loans without first resorting to the property pledged as security for the loan. As lenders go for the cash instead of the property, working capital of guarantors is impaired, causing a domino effect of failure in other projects, and a race to sue guarantors first instead of resorting to the security first.

Section 6-101, Idaho Code, relating to foreclosure of mortgages secured by real property is amended to include guarantors within the scope of the foreclosure process and to apply a single action rule. The amendment also deletes redundant language in subparagraph (3)(m). Section 6-108, Idaho Code, includes guarantors within the protections of the mortgage deficiency judgment law by requiring a single action; however, guarantors are still obligated for the total amount of their guarantee exceeding the value of the real property security. The value of the real property for determining a deficiency is modified from "reasonable" value at an unstated time to "fair market" value at the time of the sale. Credit for mortgage insurance paid for by the obligor or guarantor is given against any deficiency, and contractual waiver of the statutory protections is prohibited.

FISCAL NOTE

There should be no impact to the general fund.

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